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Remark:**(A) Related patent rules and preceding court rulings:****(A1) Completeness and Clarity of Examiner's action:**

Listed below is a quotation of MPEP 707.07:

"Completeness and "Clarity" of Examiner's Action.... The examiner's action should be complete to ALL matters...."

Listed below is a quotation of 37 C.F.R. 1.104(b) :

"Completeness of examiner's action....The examiner's action will be complete as to ALL matters....."

Listed below is a quotation of 37 C.F.R. 707.07(f): Answer All Material Traversed

In order to provide a complete application file history and to enhance the clarity of the prosecution history record, an examiner must provide clear explanations of all actions taken by the examiner during prosecution of an application. Where the requirements are traversed, or suspension thereof requested, the examiner should make proper reference thereto in his or her action on the amendment. Where the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it.

(A2) Obviousness consideration of prior art:

Listed below is a quotation of MPEP 2143.01:

Proposed combination makes prior art not working is unobvious.

Listed below is another quotation of MPEP 2143.01:

The proposed modification cannot change the principle of operation of prior art.

Listed below is a quotation of MPEP 2141.02 VI

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PRIOR ART MUST BE CONSIDERED IN ITS ENTIRETY, INCLUDING DISCLOSURES THAT TEACH AWAY FROM THE CLAIMS

A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)

(A3) Process claims:

Listed below is a quotation of MPEP 2112.02 Process Claims

PROCESS CLAIMS — PRIOR ART DEVICE ANTICIPATES A CLAIMED PROCESS IF THE DEVICE CARRIES OUT THE PROCESS DURING NORMAL OPERATION

(B) Rejection under 35 U.S.C. 101:

Claim 40 and it's dependent claims are rejected under 35 U.S.C. 101. The office action recited:

An example of a method claim that would not qualify as a statutory process would be a claim that recited "purely" mental steps. Thus, to qualify as a 35 U.S.C. 101 statutory process, the claim should positively recited the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recited the subject matter that is being transformed, for example by identifying the material that it is being changed to a different state.

Independent claim 40 is now amended to recite a "data compression machine", which represents the machine to carry out the compression process and flow chart described in the specification. Since the particular machine to which the subject matter is tied is now recited in the claim, the rejection under 35 U.S.C. 101 is respectfully requested to be withdrawn.

Independent claim 40 now further clearly recites the starting point and the ending point of the process. The starting point of the process is a human body having specific physical measurement parameters. The ending point of the process is a terminal to display the BP Code, the computer readable storage media to store the BP Code or the printing media where the code is printed for facilitating shopping process. Since the starting point of the process (the human body) and the ending point of the process (the terminal, storage media or printed media) are of different structure and state, the subject

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matter transformation requirement is now clearly identified in the subject claim, the rejection under 35 U.S.C. 101 is respectfully requested to be withdrawn.

(C) Rejection under 35 U.S.C. 103:

Claim 40 and its dependent claims are rejected under 35 U.S.C. 103 over Spackova in view of Aisaka. The position of the office action is that Spackova provided the body measurement steps (1) and (2) of the subject claims and Aisaka provided the data compression steps (3) of the subject claims. The applicant provided various supporting evidences to proof that Spackova actually measure body parameters and that the garment size chart codes of Aisaka is of different nature from that of the subject claims. The outstanding issues are herein summarized as further evidence of repeated request.

(D) The question if Spackova teaches steps (1) and (2) claimed:

(D1) Evaluation of step (1):

The applicant had repeatedly indicated Spackova failed to provide a process to disclose the key point of "defining the m different physical dimensional parameters" as claimed. The applicant had repeatedly requested to clarify and "clearly" indicate what are the "first physical dimensional parameter" and the "second physical dimensional parameter" defined by Spackova, so that the applicant can fully understand this ground of rejection and provide a proper response. So far the previous office action merely repeated the following statement:

....the indicia segments (72) and (74) are used to define various physical parameters of a subject wearing a form fitted garment, col. 4 line 1+, see Fig. 3.

Since the office action failed to identify what are the m physical dimensional parameters disclosed by Spackova, the applicant is unable to understand how the term "physical dimensional parameters" is interpreted by the office action and how the requirement of step (1) is taught by Spackova. This is a violation of 37 C.F.R. 1.104(b) and MPEP 707.07.

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(D2) Evalutaion of step (2):

Firstly the applicant had pointed out that the normal operation process of Spackova requiring the user 86 to freely move in front of the camera, so as for the previewer system of Spackova to modify and animate a garment article to change in shape and view angle according to the motion of the user (col. 1 lines 44-51, 63-66; col. 2, 35-45) this normal operation requirement goes against the requirement of step (1) because the movement of user's limbs may interfere the measurement process claimed. For example, the movement of the arm and hand may obstruct the measurement of the breast or waist, or even the arm length dimensions. Another example is that the orientation of the left arm of the user shown in FIG. 3 will obstruct the measurement of the neck circumference, another important physical parameter to be measured. Accordingly the normal operation process of Spackova teaches away from the direction of the subject claimed process. The ground of rejection is respectfully requested to be withdrawn according to MPEP 2141.02 VI and MPEP 2143.01. All previous office action failed to provide comments against this evidence, and thus failed to meet the requirement of 37 C.F.R. 707.07(f).

Secondly the applicant had previously provided a professional declaration on October 30, 2009 that the system of Spackova is based on a old time 525 lines NTSC signal (with a typical NTSC line signal shown in Appendix A), and the technical reasons why this low resolution 525 lines NTSC signal will failed to provide reasonable body measurement process for the system of Spackova under its normal process. With this declaration, the burden had been shifted to the examiner to provide "technical evidence" that the system of Spackova with the NTSC line signal of Appendix A in fact can provide measurements of physical dimensional parameters up to reasonable acceptable resolution. Previous office actions failed to provide the "technical enablement" as required by law to withstand the ground of rejection according to 37 C.F.R. 707.07(f). Finally, the office action dated 06/23/2010 provided a response as follow:

" In the examiner's view, the evidence in applicant's declaration, even if accurate, does not prove the invention of Spackova to be non-functional. As far as the examiner knows, it is not within his

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power to declare currently valid patents to be invalid or the invention of valid patents to be non-functional."

The above position of the office action is respectfully objected because, the whole disclosure of Spackova is **NEVER** designed for measuring body parameters as claimed, but to give simple directional indicators for a preview system showing how a garment's view should be modified according to user movement (col. 1 lines 44-51, 63-66; col. 2, 35-45). Therefore the prior art Spackova and the above statement of the latest office action failed to commensurate with the issue of the subject matter. Furthermore, even the content of a prior art may be actually related with a patent application, the technical performance of a prior art is the fundamental concern in the examination process, the validity of a prior art patent is never a concern. The examination of a patent should be based on "**technical true fact**" to ensure a prior art is technical capable to perform the claimed invention so as to support a ground of rejection.

(D3) Process claim:

The applicant had previously pointed out that the subject claims are process claims. According to MPEP 2112.02, Spackova is required to carry out the steps (1) and (2) in it's normal operation in order to support the rejection of claim 40. All previous office actions failed to point out where in the disclosure of Spackova, the claimed steps (1) and (2) had been treated as the normal operation process of Spackova. This is a violation of 37 C.F.R. 707.07(f).

(E) Evaluation of step (3):

In supporting the rejection of step (3), the office action recited:

*Aisaka disclosed a device for measuring garments and the body of a garment wearer (col. 1 line 60, device rates the **body** and physique of garment wearer) and teaches using a multiple digit compressed body profile code (No. 5, M, XL etc., col. 1, line 7-20) The various measurements of the body (waist, chest, height, etc.) are "compressed" into a single code (e.g., M or size 42) that represents the overall body profile.*

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On page 7 the latest office action further stated:

.....The Aisaka reference, as stated in the rejection above, is only being used to show a code (related to garments and the bodies that wear them) that is a compressed code. The examiner notes it is stated (col. 1 line 60 of Aisaka) that the device can rate the body form and physique of a garment wearer, thus it can measure a human body. Aisaka gives examples of standard compressed codes (No. 9 etc., col. 1 line 7-11) which are all single digits. However, these are merely examples, and one skill in the art could logically assume that there is also a size 10, a size 11, and so on, which are multiple digit numerical compressed codes.

(E1) Interpretation of the term "body form" in Aisaka:

The office action intentionally omitted the word "form" in Aisaka's term "body form" and conclude that Aisaka disclosed measurement of wearer's body. It is a fact that in the normal operation of Aisaka, it is **IMPOSSIBLE** for Aisaka to know the exact body measurements of a consumer user. Careful evaluation of the full disclosure of Aisaka in col. 1 line 22-28, 58-61 indicated that the two words of the term "body form" cannot be separated, and that the "body form" of col. 1, line 60 of Aisaka refers to a dummy of standard size for representing the standard size body of a consumer user. The invention of Aisaka is directed to a computer controlled (col. 1, line 59) device of Fig. 6 that can replicate dummies of different standard sizes and thus eliminate the need to provide multiple dummies of different standard sizes.

(E2) Evaluate if the expansion of the standard garment size indicators of Aisaka is obvious under patent rules:

On page 7 of the office action dated 06/23/2010, the examiner explicitly clarified that:

The Aisaka reference, as stated in the rejection above, is only being used to show a code that is a compressed code.

In arguing from this ground of interpretation, the applicant had submitted supporting evidence that the standard garment size indicators of Aisaka are "fixed

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standard size indicator" such as those of Appendix B. "Fixed standard size indicators of garments are well known to a person having ordinary knowledge in the art, that they cannot be altered non expanded from the trade recognized standard sizing system of a garment supplier. The interpretation of the office action to freely expand the number of codes in the existing standard garment size indicators according to the claimed process will violate the working sizing system of existing garment suppliers. This conclusion obviously violates MPEP 2143.01 and the related precedent court rulings. Previous office action had never responded to this argument and is in a violation of 37 C.F.R. 707.07(f).

(E3) Evaluate if standard garment size indicators are obtained from step (3) claimed:

The subject claims claimed a data compression process to provide a compression BP Code. In order to adequately support the ground of rejection, the office action is required to provide evidence that the standard garment size indicators were in fact, derived from a data compression process. As a common sense well understood by a person having ordinary knowledge in the art, a garment manufacturer assigns standard size indicators which is well understood by consumer users, such as "XL" stands for "Extra Large", and M stands for "Middle" size. As disclosed by Aisaka, garment manufacturer then provide dummies, or body forms to represent the typical size of each of these size indicators, the manufactured garments are tailored to fit these dummies or body forms. Further shown in Appendix B, standard garment size indicators are assigned to represent a group of garment sizes, wherein each parameter has a range. This specific "range of values for different parameters" characteristic is evidence that standard garment size indicator is not derived from the process of step (3). In another analogous example, a new indicator as "New Yorkers" can be provided and that the people living Manhattan and Queens are assigned to be members of this indicator. People never say that the indicator "New Yorkers" are compressed code of people living in Manhattan and Queens. The difference between assigned indicator and compressed codes can be well understood from this analogous example.

A data compression process is usually supplemented with a decompression process, such as the one disclosed in the specification. Independent claim 40 is

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now further recited to emphasize on this characteristic. Withdrawal of the subject rejection is accordingly requested.

(F) Rejection of Claims 6, 7, 9-18, 49 and 52:

Please refer to page 11, Section (B), Statement of Facts, of the Petition to Directors filed on February 19, 2010 related to the rejection of the subject claims. Previously the applicant's respectfully submitted that he was unaware of any BP Code previously available in the field before the subject invention that can be decompressed to retrieve the user body measurements. The applicant was also unaware of any well-known application example of the use of n1+n2 codes claimed as alleged by the office action for rejecting claims 6, 7, 9-18 and 49. The applicant particularly wishes to point out that the technology of n1+n2 codes towards body size measurements is not an ordinary technology to be well known to a person having ordinary skill in the art of garment industry.

Listed below is a quotation of a precedent court case *In re Sun*, 31 USPQ 2d 1451, 1455 (Fed. Cir. 1993),

Finally, appellants seemingly argue that the examiner's lack of citation to support the asserted level of skill in the art makes the rejections improper per se. This is so, appellants suggest, because without such citation, there is no record by which they can argue that the examiner erred.

The following is a quotation from 37 C.F.R. 1.107(b):

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

The examiner had previously been respectfully directed to page 3, second to fifth paragraph of applicant's response dated 05/17/2006 and section (D), page 17 of applicant's response dated 05/05/2009, which requested the office action to provide cited reference to support the ground of rejection of the subject claims, or to provide an affidavit under 37 C.F.R. 1.107(b) in lieu of the cited reference, providing citation

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regarding level of skill required by a person having ordinary knowledge in the art of garment industry to acquire the knowledge of the claimed limitation.

In response to several applicant's request made after 05/17/2006, the office action cited Runton, then Powell, then Aisaka as prior art to support the ground of rejection. After each of these prior arts were shot down by applicant's response, the office action the office action returned to the original point of 05/17/2006, using an official notice to support the ground of rejection. Although the applicant had repeatedly quoted precedent court case *In re Sun*, 31 USPQ 2d 1451, 1455 (Fed. Cir. 1993) and 37 C.F.R. 1.107(b) requesting another supporting prior art citation or an affidavit under 37 C.F.R. 1.107(b), by that time the office action simply declined the request.

In response to applicant's Petition to Directors filed on February 19, 2010, the office action on 06/23/2010 withdrawn the official notice and left the ground of rejection **"unsupported"** according to the requirement of *In re Sun*, 31 USPQ 2d 1451, 1455 (Fed. Cir. 1993) and 37 C.F.R. 1.107(b). The examiner is respectfully requested to revisit the above mentioned lengthy history of prosecution and provide an affidavit as required by *In re Sun*, 31 USPQ 2d 1451, 1455 (Fed. Cir. 1993) and 37 C.F.R. 1.107(b), if the ground of rejection is to be withheld.

Concerning the merits of rejected claims 6, 7, 9-18, 49 and 52, they had already been adequately addressed in the specification. The improved BP Code provides better information to help consumer users conduct internet garment shopping.

In view of the claim amendment provided herein, the above remark and summary to supporting evidences submitted, the examiner is respectfully requested to allow the pending claims. Finally, if the subject application is to be allowed, the examiner is respectfully reminded there is a further step to rejoin the withdrawn claims before a letter of allowance is to be issued.

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Respectfully submitted,



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Note: Attachments A and B are provided herein.

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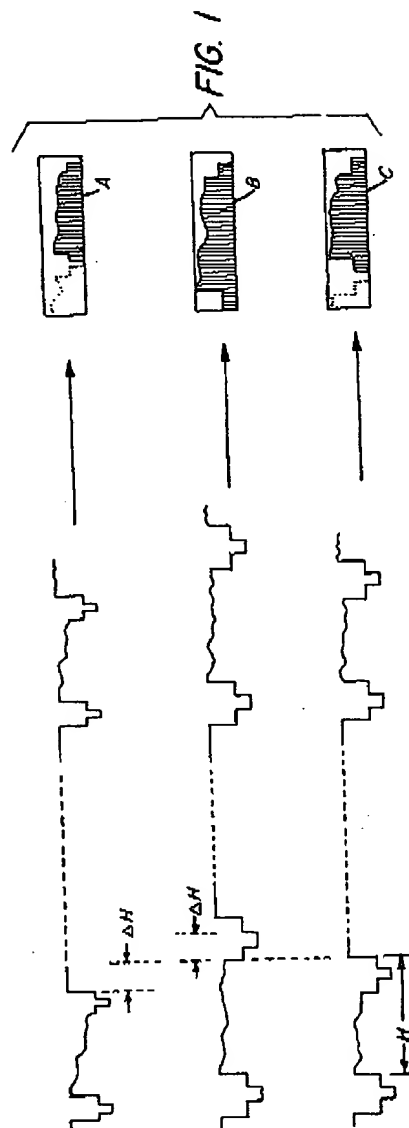
Appendix A

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Appendix B:

Listed below is a typical chart of standard size indicators – EN 13402 is a system more comprehensive than the S, M, L system. The source is from the web site address:

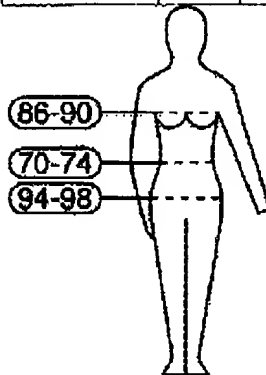
http://en.wikipedia.org/wiki/EN_13402#Dress_sizes

EN 13402 is an European standard for labelling cloth sizes.

Women**Dress sizes**

The standard sizes and ranges for bust, waist and hip girth are:

Bust girth	76	80	84	88	92	96	100	104	110
Range	74-78	78-82	82-86	86-90	90-94	94-98	98-102	102-107	107-113
Waist girth	60	64	68	72	76	80	84	88	94
Range	58-62	62-66	66-70	70-74	74-78	78-82	82-86	86-91	91-97
Hip girth	84	88	92	96	100	104	108	112	117
Range	82-86	86-90	90-94	94-98	98-102	102-106	106-110	110-115	115-120



Bust girth	116	122	128	134	140	146	152
Range	113-119	119-125	125-131	131-137	137-143	143-149	149-155
Waist girth	100	106	112	118	124	130	136
Range	97-103	103-109	109-115	115-121	121-127	127-133	133-139
Hip girth	122	127	132	137	142	147	152
Range	120-125	125-130	130-135	135-140	140-145	145-150	150-155